

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA)	
)	
)	
)	
v.)	CRIMINAL No. 95-29-P-H
)	
THOMAS J. BARTELHO,)	
)	
DEFENDANT)	

PROCEDURAL ORDER

Chief Judge Singal has referred to me a letter of July 23, 2008, from the U.S. Attorney's office enclosing a May 27, 2008, letter from the acting director of the FBI Laboratory concerning FBI testimony in United States v. Bartelho, Criminal No. 95-29-P-H, concerning bullet lead analysis. I presided at the trial in that case and sentenced the defendant. The FBI's May 27 letter was inappropriately copied to the Maine Superior Court (Cumberland County) rather than this court. The letter states:

After reviewing the testimony of the FBI's examiner, it is the opinion of the FBI Laboratory that the examiner overstated the significance of the results of the examinations conducted, possibly leading the jury to misunderstand the probative value of the evidence.

A copy of this letter is attached as Exhibit A.

The defendant Bartelho has already raised this precise issue before the United States Court of Appeals for the First Circuit in an application for leave to

file a second motion to vacate under 28 U.S.C. § 2255. In that document, filed with the First Circuit on September 5, 2006, Bartelho stated:

The FBI has just recently abandoned its bullet-matching technique because it is flawed. At the time of Petitioner's trial, there was no expert witnesses available who could have testified for the defense to rebut the FBI expert's testimony.

The First Circuit denied Bartelho's request on October 12, 2006, stating:

Taken in light of all the evidence presented at trial—including the testimony of several witnesses implicating the applicant in the underlying offenses—the information now offered as newly discovered evidence would not be 'sufficient to establish by clear and convincing evidence that no reasonable fact finder would have found the movant guilty of the offense.'

In light of that ruling by the court of appeals, there is no action for this court to take.

SO ORDERED.

DATED THIS 15TH DAY OF AUGUST, 2008

/s/D. BROCK HORNBY

D. BROCK HORNBY
UNITED STATES DISTRICT JUDGE